IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 33015 of 2005(E)

AGAINST THE ORDER DATED 27/08/2005 IN EP.112/04 IN OS.82/1999 of MUNSIFF'S COURT, KALPETTA, WAYANAD.

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PETITIONER:

M.M. MATHAI, S/O. MATHAI,
MUNGANANIYIL HOUSE, TRIKAIPATA AMSOM DESOM,
P.O. THRIKAIPATTA, VAITHIRI TALUK,
WAYANAD DISTRICT.

BY ADV. SRI.K.T.SHYAMKUMAR

RESPONDENT:

MANALIL KAITHERI MOOSAKUTTY HAJI,
S/O. KAMAL, ERIVERI AMSOM, DESOM,
P.O. MAUVANCHERY, KANNUR TALUK,
KANNUR DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.33015/05

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – TRUE COPY OF EP.112/04 IN OS.82/99 OF MUNSIFF'S COURT, KALPETTA.

Ext.P2 – TRUE COPY OF OBJECTION BY PETR. IN E.P.112/04.

Ext.P3 – TRUE COPY OF RECEIPT DT.22.9.2005 EVIDENCING PAYMENT OF RS.5000/- BY PETR. BEFORE THE EXECUTING COURT.

Ext.P4 – TRUE COPY OF ORDER DT.27.8.05 IN EP.112/04 IN O.S.82/99

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.33015 OF 2005

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DATED THIS THE 4TH JUNE, 2007

J U D G M E N T

Ext.P4 order by which the execution court directed arrest of the petitioner in execution of a money decree is under challenge in this Writ Petition under Article 227 of the Constitution of India. While admitting this Writ Petition and granting stay, this Court imposed a condition that the petitioner shall either pay to the decree-holder or deposit before the court below a sum of Rs.20,000/- within one month from 28.11.2005. It is conceded by the learned counsel for the petitioner that the above condition has not been complied with and that the petitioner has been able to pay only Rs.5000/- towards the E.P. claim. Counsel submitted that if instalment facility is granted, the petitioner will pay off the entire E.P. claim.

2. Having gone through Ext.P4 order, I find that the same is a well-reasoned one passed on the oral testimony of PW.1, decree-holder's witness and Ext.A1 encumbrance certificate relating to the petitioner's property. No counter-evidence was adduced by the petitioner at all to the evidence adduced by the decree-holder. It cannot be said that Ext.P4 order is vitiated to such an extent as to warrant invocation of the supervisory jurisdiction of this Court under

Article 227 which is not to be invoked in each and every case. The challenge against Ext.P4 will fail. However, considering the submission of the learned counsel for the petitioner that the petitioner honestly wants to pay off the decree-debt, even as I decline to interfere with Ext.P4, there will be a direction that the order of stay presently passed will continue, provided the following conditions are complied with by the petitioner:-

1) The petitioner remits or pays a sum of Rs.20,000/- within one month from today towards the decree-debt.

2) The petitioner pays the balance decree-debt in equal monthly instalments of Rs.5000/- commencing from 15.7.2007, subject to the condition that in the event of any default in the matter of paying the instalments, he will forfeit that benefit.

It is made clear that if the above two conditions are not complied with, the order of stay which is ordered to be continued will stand vacated and Ext.P4 will become operative immediately.

The Writ Petition is disposed of as above. No costs.

tgl **(PIUS C. KURIAKOSE, JUDGE)**